

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

3:08cv190-1-C

3:06cr16-C

JUSTIN MATTHEW,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

**THIS MATTER** comes before the Court upon Respondent's Second Motion for Extension of Time to File Answer (Doc. No. 5), filed June 27, 2008.

On February 11, 2008, this Court issued an Emmanuel<sup>1</sup> notice informing Petitioner that if he did not respond within twenty days this Court would construe his letters as a motion under 28 U.S.C. § 2255 and proceed accordingly. (Case No. 3:06cr16: Doc. No. 38). After two and a half months passed without Petitioner responding, the Court construed Petitioner's letters as a § 2255 motion and ordered the government to respond. (Case No. 3:06cr16: Doc. No. 38).

Petitioner has now filed an appeal in his criminal case contesting this Court's conversion of his letters to a § 2255 motion. (Case No. 3:06cr16: Doc. No. 40). Accordingly, this Court will stay Petitioner's § 2255 Motion pending resolution of this matter on appeal.

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<sup>1</sup> United States v. Emmanuel, 288 F.3d 644 (4th Cir. 2002).

**IT IS, THEREFORE, ORDERED** that:

1. this case will be stayed until the appeal pending before the United States Court of Appeals for the Fourth Circuit (App. Case No. 08-7031) is ruled upon and becomes final; and
2. Respondent's Motion for an Extension of Time is **DENIED as moot.**

Signed: July 2, 2008

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.  
Chief United States District Judge

